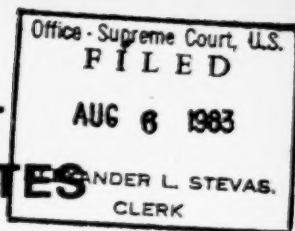


**SUPREME COURT
OF THE UNITED STATES**

October Term, 1983

NO. 83 - 252



DOMINIC BARTOLATTA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**ARTHUR LEWIS
205 South Broadway
Suite 802
Los Angeles, California 90012
(213) 624-4901
Attorney for Petitioner**

(i)

QUESTIONS PRESENTED FOR REVIEW

1. Are authorizations for wiretap applications made by assistant Attorneys General in December and January, 1980, under a stale "special designation order" of a former Attorney General dated August, 1978, whose successor took office in August, 1979, violative of 18 USC §2516.

2. Were wiretap orders obtained and utilized without normal investigative procedures having first been used and without a factual showing why normal investigative procedures could not have been utilized in this case?

CERTIFICATE AS TO INTERESTED PARTIES

UNITED STATES OF AMERICA,

vs.

DOMINIC BARTOLATTA

The undersigned, counsel of record for Dominic Bartolatta certifies that there are no known interested parties other than those participating in the case, which have been identified. These representations are made to enable judges of the court to evaluate possible disqualifications or recusal.

CHRIS PETTI aka CHRIS POULOS
ALFREDO GERARDO SICA aka FRED SICA
THOMAS PALMA
VINCENT MONTALTO

ARTHUR LEWIS
Attorney of Record for
DOMINIC BARTOLATTA

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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1983

DOMINIC BARTOLATTA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Dominic Bartolatta petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

PARTIES TO PROCEEDING

This proceeding originated in a criminal prosecution in the United States District Court for the Southern District of California wherein the United States of America was the plaintiff and the defendants were: CHRIS PETTI, ALFREDO GERARDO SICA, VINCENT MONTALTO, THOMAS PALMA and DOMINIC BARTOLATTA.

All defendants appealed from their convictions to the United States Court of Appeals for the Ninth Circuit.

The appeals were consolidated in the Court of Appeals (C.A. Nos. 82-1420, 82-1422, 82-1428, 82-1429).

Counsel for Petitioner is informed and believes that separate petitions for a writ of certiorari in this Honorable Court have been filed by CHRIS PETTI, ALFREDO GERARDO SICA, VINCENT MONTALTO, and THOMAS PALMA.

OFFICIAL AND UNOFFICIAL REPORTS

The disposition of the consolidated appeals in the United States Court of Appeals for the Ninth Circuit was by an unpublished memorandum filed and entered on April 22, 1983. A copy of this memorandum is reproduced as Appendix "A" hereto.

Petitioner did move the Court of Appeals for a rehearing which was denied. (Appendix "B".)

JURISDICTIONAL STATEMENT

The jurisdiction of the United States District Court for the Southern District of California was based on a federal indictment charging Petitioners with conspiring to conduct, and conducting, an illegal gambling business in violation of 18 U.S.C. §§ 1955 and 371.

Jurisdiction of the Court of Appeals was based on Petitioners' timely appeals from their convictions under 28 U.S.C. § 1291.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

STAY OF MANDATE

A motion for stay of the mandate was made to the Court of Appeals and opposed by Government. Said stay was denied (Appendix "C"). It is respectfully requested that this Court issue stay of mandate herein pending ruling

Petitioner Bartolatta has previously demonstrated that he will not flee or pose any danger to the community.

He remains on bond with a previously demonstrated solvent security.

He has submitted without incident or problem to the supervision of the Probation Office, and has satisfied all conditions of release since posting bond in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment IV of the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Petitioner also relies on the provisions of Title 18, United States Code, §§ 2515, 2516, and 2518, the provisions of which are set forth verbatim in Appendix "B" of co-petitioners' brief, concerning requirements for wire interception and interception of oral communications, as well as provisions prohibiting direct and derivative use of intercepted contents of communications.

STATEMENT OF THE CASE

Petitioner Bartolatta joins in the briefs of Petitioners Petti, Sica, and Montalto, heretofore filed under consolidated case numbers 82-1420, 82-1422, 82-1428, 82-1429

and incorporates the same herein by reference as though fully set out in the interest of judicial economy.

ARGUMENT FOR WRIT

Again Petitioner Bartolatta adopts and incorporates the argument of Co-Petitioners in their Petition for Writ of Certiorari and urges this Court to afford Petitioners the opportunity to review for the Court the large number of wiretap applications that are being issued contrary to this Court's mandate in **Giordano [United States v. Giordano, 40 L.Ed. 2d. 341 (1974)]**.

"Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced a clear intent to make doubly sure that the statutory authority be used with restraint and only where circumstances warrant the surreptitious interception of wire and oral communications. **These procedures were not to be routinely employed as the initial step in criminal investigation.** Rather, the applicant must state and the court must find that normal investigative procedures had been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."

(Citation omitted.)

Conclusionary language is finding its way into "boiler-plate" affidavits, particularly in gambling cases and the conclusionary language tracks the language of the statute so as to appear to or give the appearance of, complying with the statute. The affidavits are lengthy, and lost within them, are their apparent failure to comply with the statutory requirements of Title 18, §2518(1)(c).

Respectfully submitted,

ARTHUR LEWIS
Attorney for Petitioner,
DOMINIC BARTOLATTA

IN THE
SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA,

Respondent,

vs.

DOMINIC BARTOLATTA,

Petitioner.

STATEMENT OF RELATED CASES

Pursuant to Rules of the United States Supreme Court, petitioner knows of no cases that are related to this appeal.

DATED: July , 1983

ARTHUR LEWIS
Attorney for Petitioner
DOMINIC BARTOLATTA

APPENDIX "A"

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

FILED
APR 22, 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS
Plaintiff/Appellee,

vs.

CHRIS PETTI,
Aka CHRIS POULOS,
ALFRED GERARDO SICA,
Aka FRED SICA,
VINCENT MONTALTO,
THOMAS PALMA, and
DOMINIC BARTOLATTA,
Aka DANNY,

Defendants/Appellants

Nos. 82-1420, 82-1421,
82-1422, 82-1428
82-1429
USDC NOS. CR-81-1037-1-LCN
CR81-1037-2-LCN
CR-81-1037-4-LCN
CR-81-1037-3-LCN
CR-81-1037-5-LCN

MEMORANDUM

Argued and Submitted: February 11, 1983

Appeal from the United States District Court
for the Southern District of California
Honorable Leland C. Nielsen, Judge Presiding

Before: NELSON and NORRIS, Circuit Judges, and
SOLOMON,* District Judge

Appellants Chris Petti, Alfred Sica, Vincent Montalto, Thomas Palma, and Dominic Bartolatta appeal from their convictions for conspiracy to conduct an illegal gambling business in violation of 18 U.S.C. § 1371 and for conducting an illegal gambling business in violation of 18 U.S.C. § 1955.

Appellants' arguments on appeal are without merit; we therefore affirm.

The district court did not err in determining that the government had made adequate showings of "necessity" to support the San Diego, Las Vegas, and Los Angeles

*The Honorable Gus J. Solomon, Senior United States District Judge for the District of Oregon, sitting by designation.

wiretaps.¹ Each of the affidavits contained particularized and detailed information to show that normal investigative methods had been tried and failed and were reasonably unlikely to succeed in the future or would be too dangerous. 18 U.S.C. §2518(1)(c), (3)(c).

The San Diego and Los Angeles wiretap authorizations were valid. Under the doctrine of administrative continuity, the designations of authority made by Attorney General Bell continued in effect after the expiration of his term. See *In re Weir*, 520 F.2d 662 (9th Cir. 1975); *United States v. Morton Salt Co.*, 216 F. Supp. 250, 256 (D. Minn. 1962), *aff'd*, 382 U.S. 44 (1965)(per curiam).

All of the other arguments raised by appellants Palma and Bartolatta are without merit.

We therefore affirm the district court.

AFFIRMED.

1) Appellant Palma has standing to challenge the Los Angeles wiretap only. See *Alderman v. United States*, 394 U.S. 165, 176 (1968) (an individual whose conversations were intercepted has standing to assert the illegality of a wiretap order). Appellant Bartolatta has standing to challenge the San Diego wiretap because of his proprietary interest in the premises where the tapped conversations took place. See *id.* (an individual has standing to assert illegality of wiretap if conversations occurred on his premises).

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 82-1429

D.C. No. CR-81-1037-5-LCN

ORDER

FILED
JUN 20, 1983
PHILLIP B. WINBERRY
Clerk, U.S. Court of Appeals

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

DOMINIC BARTOLATTA,
aka DANNY,

Defendant-Appellant.

Before: NELSON and NORRIS, Circuit Judges, and SOL
OMON*, District Judge.

*The Honorable Gus J. Solomon, Senior United States District Judge
for the District of Oregon, sitting by designation.

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P.35(b).

The petition for rehearing is DENIED and the suggestion for a rehearing en banc is REJECTED.

APPENDIX "C"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 82-1429

D.C. No. CR-81-1037-5-LCN

FILED

JUL 18, 1983

PHILLIP B. WINBERRY

Clerk, U.S. Court of Appeals

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

DOMINIC BARTOLATTA,
aka DANNY,

Defendant-Appellant.

Before: NELSON and NORRIS, Circuit Judges, and
SOLOMON,* District Judge

Appellant's Motion for Stay of Mandate Pending Ap-
plication for Certiorari is denied.

***The Honorable Gus J. Solomon, Senior United States District Judge**
for the District of Oregon, sitting by designation.

PROOF OF SERVICE

STATE OF CALIFORNIA)

) ss:

COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 Agate Street, Riverside, California 92509.

On , 1983, I served the within PETITION FOR A WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of five (5) sealed envelopes, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

Robert D. Rose	Harrison W. Hertzberg, Esq.
Assistant US Attorney	3550 Wilshire Blvd.
U.S. Courthouse	Los Angeles, CA 90010
940 Front St.	Victor S. Eriksen, Esq.
Room 5-N-19	1067 Front St.
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REX LEE

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Oscar B. Goodman, Esq.
520 S. Fourth St.
Las Vegas, Nevada 89101

James J. Ferruzzo, Esq.
505 City Parkway West
Penthouse Suite
Orange, CA 92668

I certify under penalty of perjury that the foregoing is
true and correct.

EXECUTED on , 1983, at Riverside, California.

JACK GALLAGHER